IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12680 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MOHANSINH BAHADURSINH CHAUHAN

Versus

STATE TRANSPORT CORPORATION

Appearance:

1. Special Civil Application No. 12680 of 2001

MR NALIN K THAKKER for Petitioner No. 1

..... for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 20/03/2002

ORAL JUDGEMENT

#. Heard Mr.Nalin K.Thakkar, learned advocate appearing on behalf of the petitioner.

#. The petitioner workman has challenged the award passed by the Industrial Tribunal, Ahmedabad in Reference

[IT] No.101 / 1996 dated 27th September, 2000, wherein the tribunal has modified the punishment of punishment of putting the workman to minimum scale of the Driver category reduced to stoppage of two increments with effect from 1st January, 2001 with cumulative effect without any arrears of interim period. Learned advocate Mr.N.K.Thakkar on behalf of the petitioner has raised contention that initial punishment of putting the workman concerned on minimum time scale was harsh punishment. It is also submitted by Mr.Thakkar that this modified punishment is also harsh. Mr.Thakkar, learned advocate has submitted that even not to pay the arrears of interim period is also harsh and same amounts severe penalty. Mr.Thakkar, learned advocate for petitioner has read the award passed by the Tribunal wherefrom it is pointed out that the tribunal has come to the conclusion that there was no collusion between the Driver and the Conductor for the misconduct of carrying 21 Canes of liquor. However, he submitted that though negligence was found to have proved before the tribunal, for this, punishment is shockingly disproportionate and same requires to be interfered with by this Court. Mr.Thakkar, learned advocate has also submitted that the petitioner workman has completed more than 15 years in the cadre of Driver and punishment of putting the workman to minimum time scale of Driver Category is imposed on 17th May, 1993, therefore, not to pay arrears for more than seven years amounts to huge loss caused to the petitioner and therefore, some interference by this Court is called for in the facts and circumstances of this case. Mr.Thakkar, learned advocate also submits that the petitioner workman is having clean and good past record. He also points out that the workman driver is not directly responsible as held by the Tribunal and in departmental inquiry, police officer and the conductor was not examined. He further submits that the tribunal has also considered that though the driver was involved in the said incident but there was mere negligence on the part of the driver and this fact was proved before the departmental authority. Therefore, the Tribunal has considered that indirectly the petitioner driver has assisted the Conductor. He also submits that in departmental inquiry, the competent authority has come to the conclusion on the basis of presumption without any legal evidence led in the departmental inquiry. Except these submissions, learned advocate Mr.Thakkar has not raised any other submission.

#. I have considered submissions of the learned advocate Mr.N.K.Thakkar on behalf of the petitioner. The misconduct which has been alleged against the present petitioner that he was working as Driver on 27th

December, 1990 on route from Srinathji to Ahmedabad route and at that time, the conductor was working with the Driver Mr.M.B.Chauhan and both were under collusion with each other carried 220 liters liquor in 21 canes in bus without any passenger and without any luggage. The bus was checked at Chiloda police chawki and report was submitted against the Driver and the Conductor. The police case has been filed against the conductor and not against the petitioner. On the basis chargesheet, departmental inquiry was initiated against the petitioner and thereafter, the competent authority by order dated 17th May, 1993 has imposed punishment putting the petitioner driver to minimum time scale of driver category. Against this order of punishment, the petitioner raised industrial dispute, which was referred for adjudication to the Industrial Tribunal, Ahmedabad being Reference No.101/1996. Before the tribunal, the petitioner workman has filed statement of claim and respondent Corporation has filed written statement vide Exh.7. No oral evidence has been led by the either side. Even before the tribunal, the petitioner workman has not challenged the legality and validity of the departmental inquiry. However, the workman challenged the finding given by the competent authority and also challenged the quantum of punishment imposed by the competent authority being harsh and unjustified. Thereafter, the respondent Corporation has produced paper of departmental inquiry vide Exh.8 and vide Exh.9 produced report of the Police Officer. According to the report of the Police Officer, it was decided by the Conductor and Driver to carry 220 liters liquor in 21 canes in bus and therefore, the conductor informed the driver to stop the bus at a particular stop or place and he has accordingly stopped the bus at Gadadar village. Accordingly, the driver of the bus was aware that the bus stopped at the spot is not stand given by the Corporation. Thereafter, 220 liters liters in 21 canes were taken into the bus by the conductor. Thereafter, according to the driver, it was informed to the police authority and bus was checked and thereafter, the police case was filed against the conductor. This was the stand taken by the driver petitioner herein before the police authority. He has taken the bus to police station for filing complaint against the conductor for carrying 220 liters liquor contained in 21 canes in said bus. Therefore, the police authority has held responsible the conductor and police case was filed against the conductor. According to the police report, the driver has given cooperation in police investigation. Thereafter, the departmental authority, the reporter has submitted the report vide Exh.10, wherein it was mentioned that the driver and the

conductor both had hands in glove and under collusion with each other, liquor was being transported in the bus. The driver has admitted in the departmental inquiry that there was no stoppage at Gadadar but he had stopped the bus at Gadadar at the instance of the conductor. The driver also stated that he was not aware as to the fact that how many passengers boarded in the bus and whether any material took inside the bus or not. It was also stated by the driver that the bus stopped at the spot for five minutes at Gadadar. Before the departmental authority that he has specifically admitted that who has informed the police authority, his reply was, he is not aware about this fact. Therefore, contrary statement made by the driver before the departmental authority and the police authority. It has come on record that the driver has submitted that he has informed the police authority, whereas before the departmental authority, he made statement that he was not aware who has informed the police authority. It was also stated that Chiloda Police had given single to stop the bus and accordingly the bus was stopped. It was also admitted that thereafter the driver and conductor had gone to have meal. These facts are taken into account by the tribunal. Ultimately, the tribunal has considered the finding given by the competent authority and the evidence led in the departmental inquiry. The tribunal has rightly come to the conclusion that there was no direct involvement of the petitioner but equally considering the fact that the driver was aware about the fact of liquor being transported by the conductor. Therefore, considering the contradictory stand taken by the petitioner before the police authority and in the departmental inquiry proceedings, ultimately, the tribunal has come to the conclusion that report of the police authority which was in favour of the petitioner, cannot be considered to be correct and therefore, the tribunal has come to the conclusion that looking to these facts and evidence which was led in the departmental inquiry, punishment awarded to the petitioner concerned workman putting to minimum time scale of the salary scale is harsh and unjustified and therefore, said punishment required to be modified. Accordingly, the tribunal has modified the punishment to suffer stoppage of two increment with cumulative effect from 1-1-2001 instead of putting the petitioner workman concerned to minimum time scale and further the tribunal has not awarded any backwages or arrears to the petitioner for the interim period on account of modification in punishment.

#. I have perused the entire award passed by the tribunal. The tribunal has given cogent reasons in

support of its conclusion. There is no error committed by the tribunal. The tribunal has exercised its discretionary powers to give effect of award from particular date. The tribunal can also pass award with retrospective effect and as also from prospective effect but this depends upon the facts and circumstances of each case. Therefore, the tribunal is the only proper authority who can take appropriate decision while exercising such discretionary powers. Therefore, when this Court has considered that the tribunal has rightly passed award, in such circumstances, it would not proper for this Court to interfere with the award while exercising the powers under Article 226 and 227 of the Constitution.

#. So far the contention of learned advocate Mr.Thakkar that denial of arrears, is also harsh punishment. However, the question is that driver and the conductor both were liable for carrying 220 liters liquor in 21 canes in the bus. The bus is public vehicle meant for transportation of public but in the instant case in the incident, the driver and the conductor utilized this vehicle for illegal means for personal gain. Whether the driver or the conductor was responsible is not material question but what is important fact which is not disputed that at the time of checking by police squad at Chiloda, it was found that 220 liters liquor in 21 canes was in the bus. It has not come on record that these 21 canes were carried out by any passenger and it was not case of the either driver or the conductor, meaning thereby, said liquor was allowed by the conductor with the help of the driver. If the driver had not stopped the bus at unauthorised stand to facilitate the conductor to allow such liquor in the bus, said misconduct would not have occurred. Therefore, considering this fact that public vehicle was used for illegal means and purpose by the driver and the conductor, according to my opinion, denial of arrears to the driver is just, proper and reasonable punishment considering the gravity of misconduct and same cannot be said to be arbitrary or excessive one. Therefore, this contention raised by Mr.Thakkar, learned advocate cannot be accepted at all.

#. However, it is settled position of law that the powers of this Court are very limited while examining the legality and validity of the award passed by the labour court. The view taken by the Apex Court in Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union and Another reported in 2000 SCC [Labour and Service] pg.471, the Apex Court has held that while exercising the

powers under Article 226 and 227 of the Constitution, interference with pure finding of fact and Reappreciation of the evidence is held to be impermissible. The High Court does not exercise appellate jurisdiction under Article 226. Even insufficiency of evidence or that another view is possible, it is held that no ground to interfere with the findings of the Industrial Tribunal. Recently also, the Apex Court has considered this aspect in case of SUGARBAI M. SIDDIQ AND OTHERS V. RAMESH S. HANDKARE reported in 2001 [8] SCC pg.477, the Apex Court has held that scope of powers of High Court is concerned not with the decision of the lower court / tribunal but with its decision-making process. High Court must ascertain whether such Court or tribunal had jurisdiction to deal with a particular matter and whether the order in question is vitiated by procedural irregularity, then only High Court can interfere with, otherwise, not.

#. In view of above discussion and the fact that Mr.N.K.Thakkar, learned advocate fails to point out any other infirmity in the award, in view of this Court, the tribunal has rightly reduced and modified the punishment taking into account the facts on record and in the circumstances of the case and finding on record and therefore, there is no substance in this petition, which deserves to be rejected at the threshold and same is rejected accordingly.

Date : 20-3-2002 [H.K.Rathod, J.]

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